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7 Attorneys for Plaintiff
 8 Dale R. Peterson

FILED

08 JUL -1 PM 2:05

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

ECL

DEPUTY

11 **UNITED STATES DISTRICT COURT**
 12 **SOUTHERN DISTRICT OF CALIFORNIA**

DALE R. PETERSON,

Plaintiff,

v.

LVNV FUNDING, LLC,

Defendant.

Case No.: '08 CV 1171 JLS NLS

COMPLAINT FOR DAMAGES**JURY TRIAL DEMANDED****INTRODUCTION**

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq (hereinafter "FDCPA"), to eliminate abusive debt collection practices by debt collectors, to insure that

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1 those debt collectors who refrain from using abusive debt collection practices
2 are not competitively disadvantaged, and to promote consistent State action to
3 protect consumers against debt collection abuses.¹

- 4 2. The California legislature has determined that the banking and credit system
5 and grantors of credit to consumers are dependent upon the collection of just
6 and owing debts and that unfair or deceptive collection practices undermine
7 the public confidence that is essential to the continued functioning of the
8 banking and credit system and sound extensions of credit to consumers. The
9 Legislature has further determined that there is a need to ensure that debt
10 collectors exercise this responsibility with fairness, honesty and due regard for
11 the debtor's rights and that debt collectors must be prohibited from engaging
12 in unfair or deceptive acts or practices.²

- 13 3. Dale R. Peterson, ("Plaintiff"), by Plaintiff's attorneys, brings this action to
14 challenge the actions of LVNV FUNDING, LLC, ("Defendant"), with regard
15 to attempts by Defendant, a debt collector, to unlawfully and abusively collect
16 a debt allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.

- 17 4. Unless otherwise indicated, these allegations are made on information and
18 belief. Further, the use of any defendant's name in this Complaint includes all
19 agents, employees, officers, members, directors, heirs, successors, assigns,
20 principals, trustees, sureties, subrogees, representatives and insurers of that
21 defendant named. All allegations are made on information and belief, except
22 those allegations that pertain to the named Plaintiff(s), or to their attorneys,
23 which are alleged on personal knowledge.

24 JURISDICTION AND VENUE

- 25 5. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331 and 15 U.S.C. §
26 1692k(d), and 28 U.S.C. § 1367 for supplemental state law claims.

27
28 ¹ 15 U.S.C. §§ 1692(a)-(e)

² Cal. Civ. Code §§ 1788.1 (a)-(b)

6. This action arises out of Defendant's violations of the following: the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 (RFDCPA), the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq.

7. Because Defendant does business within the State of California, personal jurisdiction is established.

8. Venue is proper pursuant to 28 U.S.C. § 1391.

PARTIES

9. Plaintiff is a natural person who resides in the City of San Diego, County of San Diego, State of California and is obligated or allegedly obligated to pay a debt, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

10. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a "debtor" as that term is defined by California Civil Code § 1788.2(h).

11. Plaintiff is informed and believes, and thereon alleges, that Defendant is a company doing business in California.

12. Plaintiff is informed and believes, and thereon alleges, that Defendant is a person who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is therefore a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6).

13. Plaintiff is informed and believes, and thereon alleges, that Defendant, in the ordinary course of business, regularly, on behalf of himself or herself or others, engages in debt collection as that term is defined by California Civil Code § 1788.2(b), and is therefore a "debt collector" as that term is defined by California Civil Code § 1788.2(c).

1 14. This case involves money, property or their equivalent, due or owing or
2 alleged to be due or owing from a natural person by reason of a consumer
3 credit transaction. As such, this action arises out of a "consumer debt" and
4 "consumer credit" as those terms are defined by Cal. Civ. Code § 1788.2(f).

5 **FACTUAL ALLEGATIONS**

6 15. At all times relevant, Plaintiff was an individual residing within the State of
7 California.

8 16. Plaintiff is informed and believes, and thereon alleges, that at all times
9 relevant Defendant conducted business in the State of California.

10 17. Sometime before December 13, 2007, Plaintiff allegedly incurred financial
11 obligations to LVNV FUNDING, LLC that were money, property, or their
12 equivalent, which is due or owing, or alleged to be due or owing, from a
13 natural person to another person and were therefore "debt(s)" as that term is
14 defined by California Civil Code §1788.2(d), and a "consumer debt" as that
15 term is defined by California Civil Code §1788.2(f).

16 18. These financial obligations were primarily for personal, family or household
17 purposes and are therefore "debt(s)" as that term is defined by 15 U.S.C.
18 §1692a(5).

19 19. Sometime thereafter, Plaintiff allegedly fell behind in the payments allegedly
20 owed on the alleged debt.

21 20. Plaintiff maintains that he never incurred a debt directly to LVNV Funding,
22 LLC.

23 21. Plaintiff is informed and believes, and thereon alleges that Defendant engages
24 in a pattern and practice in which it routinely purchases old, defaulted debt in
25 batches, for which it pays pennies (or less) on the dollar. Defendant then files
26 lawsuits against individuals allegedly indebted on an account to a creditor,
27 which Defendant claims to have purchased directly or indirectly from the
28 creditor. Defendant, however, does not obtain from the original creditor, or

1 from an assignee of the original creditor, admissible evidence demonstrating
2 the amount of the debt allegedly owed by the debtor before filing lawsuits.
3 Defendant also fails to undertake any reasonable investigation into whether a
4 debtor's alleged debt is barred by the Statute of Limitations. Furthermore,
5 Defendant does not obtain admissible evidence of the original agreement or
6 admissible evidence of the chain of ownership of the debts. Plaintiff
7 understands Defendant's practice is to then obtain a default judgment, which
8 is extremely difficult for the debtor to overturn.

9 22. Defendant's practice enables it to proceed to post-judgment collection
10 regardless of whether it could have proved its case in disputed litigation.

11 23. On or about December 13, 2007, Defendant, alleging Plaintiff incurred a debt
12 directly with Defendant LVNV Funding, LLC, sought to collect on the alleged
13 debt by filing an action in state court entitled LVNV Funding, LCC v. Dale R.
14 Peterson, Case No.: 37-2007-00083809-CL-CL-CTL.

15 24. The lawsuit filed by Defendant was a "communication" as that term is defined
16 by 15 U.S.C § 1692a(2), and a "debt collection" as that term is defined by Cal.
17 Civ. Code § 1788.2(b).

18 25. Plaintiff is informed and believes, and thereon alleges that Plaintiff never
19 incurred a debt directly to Defendant, as Defendant alleged in the state court
20 action.

21 26. Defendant knew or should have known that the action had no merit and no
22 evidence existed that PETERSON owed this alleged debt. As such,
23 Defendant's actions violated 15 U.S.C. § 1692e(5) in taking action that cannot
24 legally be taken, and 15 U.S.C. § 1692f in constituting an unfair or
25 unconscionable means to collect or attempt to collect the alleged debt.
26 Defendant actions also violated Cal. Civ. Code § 1788.17.

27 //

28 //

- 1 27. Defendant knew the alleged evidence it possessed and/or was able to procure
2 during the course of litigation would be insufficient as a matter of law to
3 prove its case at the time of trial. Specifically, Defendant conducted
4 absolutely no investigation into the facts of the underlying state case or as to
5 when the last payment was made by Plaintiff or that no legitimate debt
6 existed.
- 7 28. Defendant's failure to conduct any reasonable inquiry into the facts or merits
8 of the allegations violated 15 U.S.C. §§ 1692d, 1692e, 1692e(10), 1692f, and
9 1692f(1). Because this action violated 15 U.S.C. §§ 1692d, 1692e, 1692e(10),
10 1692f, and 1692f(1), it also violated Cal. Civ. Code § 1788.17.
- 11 29. Despite Defendant's knowledge, it continued to litigate this case, which was
12 subsequently dismissed by Defendant in May, 2008. Even though Defendant
13 dismissed this action, no notice was ever provided to Plaintiff that the action
14 was dismissed. Based on Defendant's failure to provide any notice of the
15 dismissal, Plaintiff was forced to retain counsel to continue to defend this
16 fivious state court action. Counsel for Plaintiff was forced to prepare and
17 to appear at a scheduled OSC hearing and find the case dismissed. Based on
18 the dismissal by Defendant, Plaintiff was the prevailing party in the state court
19 action.
- 20 30. Defendant's continued litigation of its meritless claim constituted harassment,
21 oppression, and abuse to Plaintiff in violation of 15 U.S.C. § 1692d. Because
22 Defendant's actions violated 15 U.S.C. § 1692d, it also violated Cal. Civ.
23 Code § 1788.17.
- 24 31. Plaintiff was also forced to incur legal expenses in defense of this action. This
25 constituted unfair practices in violation of 15 U.S.C. § 1692f. Specifically,
26 Defendant caused Plaintiff to incur charges in defending its meritless lawsuit
27 in violation of 15 U.S.C. § 1692f(1). Defendant also violated Cal. Civ. Code
28 § 1788.17 as it incorporates 15 U.S.C. §§ 1692f and 1692f(1).

CAUSES OF ACTION CLAIMED BY PLAINTIFF

COUNT I

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. § 1692 ET SEQ.

32. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

33. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

34. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from each Defendant.

COUNT II

VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

Cal. Civ. Code §§ 1788-1788.32 (RFDCPA)

35. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

36. The foregoing acts and omissions constitute numerous and multiple violations of the RFDCPA.

37. As a result of each and every violation of the RFDCPA, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from each Defendant.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant for:

FAIR DEBT COLLECTION PRACTICES ACT

- an award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1) in an amount to be adduced at trial, from Defendant;
- an award of statutory damages of \$1,000.00, pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- an award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3).

ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

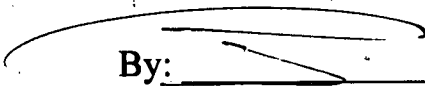
- an award of actual damages pursuant to California Civil Code § 1788.30(a) in an amount to be adduced at trial, from Defendant;
- an award of statutory damages of \$1,000.00, pursuant to Cal. Civ. Code § 1788.30(b);
- an award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

TRIAL BY JURY

38. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: 6/27/08

Respectfully submitted,
HYDE & SWIGART

By: 
Joshua B. Swigart, Esq.
Attorney for Plaintiff

**UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

**# 152465 - TC
* * C O P Y * *
July 01, 2008
14:09:06**

Civ Fil Non-Pris

USAO #: 08CV1171
Judge.: JANIS L. SAMMARTINO
Amount.: \$350.00 CK
Check#: BC2450

Total-> \$350.00

**FROM: DALE R. PETERSON
VS
LVNV FUNDING**

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

DALE R. PETERSON

DEFENDANTS

LVNV FUNDING, LLC.

08 JUL -1 PM 2:05
08 CV 1171 JLS-NLS
CLERK OF DISTRICT COURT
DISTRICT OF CALIFORNIA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)

San Diego

BY:

DEPUTY

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Joshua B. Swigart (SBN 225557)
411 Camino Del Rio South, Ste. 301
San Diego, CA 92108
Tel: 619-233-7770

ATTORNEYS (IF KNOWN)

Unknown

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PT | DEF | | PT | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. and the Rosenthal Fair Debt Collection Practices Act, Cal Civ Code 1788-1788.32 (RFDCPA)

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Arbitration
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 620 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 630 Patent	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 640 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Rags	<input type="checkbox"/> 640 Trademark	<input type="checkbox"/> 470 Racketeers Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 661 HIA (1395b)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 662 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 663 DIWC/DIWW (405(a))	<input type="checkbox"/> 875 Customer Challenge 12 USC
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 365 Personal Injury - Medical Malpractice	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 664 SSID Title XVI	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 665 FSI (405(a))	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 670 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 671 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 230 Rent Lease & Easement	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 380 Other Personal Property Damage			<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability			<input type="checkbox"/> 950 Constitutionality of State
<input type="checkbox"/> 250 All Other Real Property	<input type="checkbox"/> 390 Other Civil Rights			<input type="checkbox"/> 990 Other Statutory Actions
	<input type="checkbox"/> 400 Other Civil Rights			
	<input type="checkbox"/> 441 Voting			
	<input type="checkbox"/> 442 Employment			
	<input type="checkbox"/> 443 Housing/Accommodations			
	<input type="checkbox"/> 444 Welfare			
	<input type="checkbox"/> 440 Other Civil Rights			
	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus			
	<input type="checkbox"/> 530 General			
	<input type="checkbox"/> 535 Death Penalty			
	<input type="checkbox"/> 540 Mandamus & Other			
	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 555 Prisoner Conditions			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 76000

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE 06/27/2008

SIGNATURE OF ATTORNEY OF RECORD

152465 TAC \$350 7/1/08

ODMA\PCDOCS\WORDPERFECT\22816\1 January 24, 2000 (3:10pm)

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